



## REQUEST FOR PROPOSAL (RFP)

March 5, 2010

**RFP NUMBER:** RFP No. 0219-10-GES

**RFP SUBJECT:** GENERAL ENGINEERING SERVICES

**SEALED PROPOSALS  
SHOULD BE SUBMITTED TO:**

Purchasing Office/City Of Falls Church  
300 Park Avenue, Rm 300 East  
Falls Church, Virginia 22046  
Phone (703) 248-5007

All inquiries should be made in writing and forwarded to Faye Smith, Purchasing Manager, via email to [fsmith@fallschurchva.gov](mailto:fsmith@fallschurchva.gov) with copy to [retris@fallschurchva.gov](mailto:retris@fallschurchva.gov) by no later than five (5) business days prior to the RFP due date.

**PROPOSALS DUE DATE AND TIME:** by no later than April 1, 2010 at 11:00 a.m.

Prevailing Local time (Purchasing Office Clock)

Proposals are to be presented for time and date validation  
**ONLY to the City of Falls Church Purchasing Office.**

All questions must be received in writing by no later five (5) business days before Proposal Due Date.

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**THIS PAGE MUST BE COMPLETED, SIGNED AND RETURNED WITH BID**

In compliance with this Invitation for Bids and to all the conditions imposed herein, the undersigned offers and agrees to furnish the goods and/or services in accordance with the attached signed bid.

*Please type or legibly print all information.*

**LEGAL NAME & ADDRESS OF FIRM:**

\_\_\_\_\_  
Company's Legal Name By: \_\_\_\_\_  
Authorized Representative - Signature in Ink

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Zip: \_\_\_\_\_ Date \_\_\_\_\_

Phone: \_\_\_\_\_ FAX: \_\_\_\_\_

Email: \_\_\_\_\_  
VA Business Registration # and other applicable Licenses

The City of Falls Church is committed to the letter and spirit of the Americans with Disabilities Act. This document will be made available in alternate format upon request. Call 703 248-5007, (TTY 711).

The City of Falls Church does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against any bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

**RFP No. 0219-10-GES**  
**GENERAL ENGINEERING SERVICES**

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## I. GENERAL

- A. ACCESS TO RFP UPDATES: This RFP and any addenda are available on the City of Falls Church website: [www.fallschurchva.gov](http://www.fallschurchva.gov). The **Open Bids** link is listed under the **Purchasing & Procurement** link in the Popular Topics Section on the home page.
- B. Offerors should be mindful that changes to the RFP, in the form of addenda, are often issued between the issue date and within three (3) days before the closing of the RFP. Offerors are solely responsible for checking the Website to insure that they have the most current information regarding the RFP.
- C. All addenda must be signed and submitted with your proposal.
- D. Any questions pertaining to this solicitation must (1) be in writing, (2) received by no later than five (5) business days prior to the RFP closing date and (3) be directed only to:  
 Faye Smith, Purchasing Manager  
 The City of Falls Church  
 300 Park Ave, Falls Church, VA 22046  
[fsmith@fallschurchva.gov](mailto:fsmith@fallschurchva.gov) / Phone: 703.248.5007  
 with a copy to [retris@fallschurchva.gov](mailto:retris@fallschurchva.gov)
- E. The City is not liable for any costs incurred by any Offeror in connection with this RFP or any response by any Offeror to this RFP. The expenses incurred by Offeror in the preparation, submission, and presentation of the proposal are the sole responsibility of the Offeror and may not be charged to the City.
- F. The City of Falls Church is committed to the letter and spirit of the Americans with Disabilities Act. To request a reasonable accommodation for any type of disability call 703 248-5007, (TTY 711).

## II. COMPETITION INTENDED

It is the City of Falls Church's intent that this Request for Proposals (RFP) permits competition. It shall be the offeror's responsibility to advise the City's Purchasing Manager, in writing, if any language, requirement, specification, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in this RFP to a single source. Such notification must be received by the Purchasing Manager not later than fifteen (15) days prior to the date set for acceptance of proposals.

Nothing herein is intended to exclude any responsible offeror or in any way restrain or restrict competition. All qualified offerors are encouraged to submit proposals.

This solicitation is being conducted in accordance with the guidelines of the Competitive Negotiation (professional services) method of contractor selection per the Virginia Public Procurement Act which is incorporated herein by reference.

## III. RIGHTS OF THE CITY

Among the rights of the City specified herein, in law and/or in equity, the City reserves the right to withdraw or re-advertise this RFP, accept or reject all or any part of proposals, waive minor technicalities/informalities, and/or award the contract to the most qualified and best suited offeror to best serve the interest of the City. This is a Request for Proposal and is in no way to be misconstrued as a commitment to purchase on the part of the City.

## IV. ELIGIBILITY

The following minimum requirements must be met at the time a Proposal is submitted and maintained during the term of any resultant contract:

1. The offeror must be registered to do business in the Commonwealth of Virginia.
2. The offeror must be licensed in accordance with the specific requirements of this solicitation and the Code of Virginia (Licensed Engineer, Contractor's license, etc).

It is the Contractor's sole responsibility to have knowledge of the applicable licenses(s), if any, associated with this solicitation's scope of work.

Any person or firm, or agent of any person or firm, currently suspended or debarred from participation in City procurement, conducting business or submitting proposals on contracts by any other local government or agency of the Commonwealth of Virginia, or the Federal Government is not eligible for contract award under this solicitation.

## **V. PURPOSE**

The City of Falls Church ("City") is soliciting Proposals from qualified engineering firms to provide General Professional Engineering Services which may greatly vary in scope and/or services required, on an as-needed basis, as further described herein.

## **VI. SCOPE OF WORK**

The Consultant (hereinafter "Contractor") shall from time to time, furnish all labor and resources to perform and provide general professional engineering services, which may include but are not limited to; surveying; cost estimates; construction stakeouts; environmental analysis; easement plats; geo-technical analysis; water and sewer system analysis and design; site plan preparation or reviews; renovations; the design of new facilities, modifications to existing facilities; engineering studies; reports; and other similar, related and/or miscellaneous engineering services associated with City infrastructure and rights of way/properties and buildings and their associated mechanical, electrical, HVAC, plumbing and other systems, as maybe deemed necessary by the City.

Such work will be individually assigned by task order at the sole discretion of the City. For each project, the City shall discuss the nature and scope of the project with the Contractor. The Contractor shall then furnish in writing to the City's designee a detailed scope of work and detailed cost estimate for the City's review and approval. The Contractor shall not proceed with the work until a written task order from the City authorizing the Contractor to proceed is received.

Tasks may include, but not be limited to, the following services, which are not listed in any particular order of priority:

### **A. Engineering studies including but not limited to:**

1. Evaluation, analysis, and design of municipal facilities (buildings, utilities, roadways), including school facilities
2. Master Planning and Economic Analysis
3. Electrical System Design and Analysis
4. Mechanical System Design and Analysis
5. HVAC design and analysis
6. Organization, Staffing, and Operating Procedures
7. Cost Estimation
8. Architectural Services
9. Water Chemistry
10. Energy Management
11. Trouble Shooting
12. Security System Evaluation
13. Evaluation and analysis of water system facilities and operations
14. Studies and design of water distribution systems, including storage, pump stations, and hydraulic analysis
15. Storm water facility design, analysis, permitting
16. Surveying and plat preparation, preparation of as-built drawings
17. Easement/right of way acquisition
18. Environmental Impact Analysis

19. Water resources management
  20. Cell phone lease contract assistance
  21. Traffic Engineering studies and design
  22. Site design/site plan preparation
  23. GIS/Mapping/Modeling
  24. Solid Waste management studies and permitting
- B. Engineering Design of facilities or modifications to existing facilities, including but not limited to:
1. Preparation of "bid-ready" plans & specifications
  2. Cost Estimates
  3. Contract Award Recommendations
- C. Project Management
- D. Construction management and inspection services
- E. Construction Contract Administration
- F. Special consultation and miscellaneous duties, as directed from time to time.

### **GENERAL REQUIREMENTS**

- A. The Contractor shall be familiar with local regulations, permits, zoning, and ordinances. The Contractor may be required to prepare submittals, including all permit applications and any subsequent revisions, to County, State, and Federal agencies as required for their review and approval of design and construction.
- B. The Contractor may be required to assist the City in developing plans and specifications to be included in selected Invitations for Bid (IFBs) and/or Request for Proposals (RFPs), as well as document preparation and printing, participate in pre-bid/proposal meetings and site visits, and responding to bidder's/offeree's questions. These specifications shall comply with the current edition of The Construction Specifications Institute's (CSI) Master Format regarding Division, Section, and Page formatting.
- C. The Contractor may be required to perform economic analyses and/or value engineering of proposed work, provide engineer's estimates of cost, and assist the City in the evaluation of bids/proposals.
- D. During assigned construction related tasks, the Contractor may be required to provide shop drawing review, attend progress meetings, and provide other office-based construction services. Project management, construction management services, and field inspection services shall be considered alternative services which, at the City's sole discretion may be assigned to the Contractor upon completion of the design phase. The Contractor may be required to perform project or construction management, or field inspection services for projects designed by others.
- E. Plans may be developed in a computerized format (current release of AutoCAD). Written documents shall be in a computerized format compatible with the version of Microsoft Office currently used by the City except as otherwise specified.

The City reserves the right to expand or delete services as necessary and cannot guarantee the amount of work or predict funding for planned projects.

The City, at its discretion, may contract with other engineering consultants/contractors, in addition to the one which may be awarded under this RFP.

### **VII. CONTRACT PERIOD AND RENEWAL OPTIONS**

- A. The proposed contract shall cover the target period from date of award through a one (1) year period except as otherwise provided in this solicitation. The City reserves the right to

renew the contract for four (4) successive years, one (1) year periods, upon mutual written agreement of the parties. Automatic contract renewals are prohibited.

- B. Notice of intent to renew may be given to the Contractor in writing by the City, normally ninety (90) days before the expiration date of the current contract. Failure to give such notice will not constitute a breach of this contract. This notice will not be deemed to commit the City of Falls Church to a contract renewal.
- C. Contractor shall notify the City in writing at least ninety (90) days prior to contract expiration if Contractor intends not to extend the contract term even if such extension is offered by the City.
- D. The City may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.
- E. Non-Appropriation of Funds - All funds for payments by the City for goods/services under contract are subject to the availability of general or specific annual appropriation for this purpose by the City of Falls Church City Council. In the event of non-appropriation of funds by the City Council for the goods or services provided under contract or substitutes for such goods or services which are as advanced or more advanced in their technology, the City will terminate the contract, without termination charge to the City, on June 30th of the then current fiscal year or when the appropriation made for the then current year for the services covered by the contract is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Contract, cancellation will be accepted by the Contractor on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and the City shall not be obligated under the contract beyond the date of termination. Contractor will be reimbursed for the reasonable value of any actual, documented, nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. No amount shall be allowed for anticipated profit on unperformed services.

#### **VIII. CONTRACT DOCUMENTS**

- A. This solicitation including all attachments, exhibits and/or appendices hereto shall become a part of any contract that may be awarded inclusive of any the terms, conditions and/or provisions that may be changed, added to, deleted, or modified as may be agreed to between the City and the Offeror during negotiations.
- B. Other documents which shall be become a part of any resultant contract include but are not limited to:
  - Offeror's Proposal
  - Proposal clarifications; Responses to questions/issues.
  - Documents submitted in conjunction with oral discussions/presentations.
  - Memoranda of Negotiations

#### **IX. TRADE SECRETS OR PROPRIETARY INFORMATION**

- A. Trade secrets or proprietary information submitted by an offeror in response to this Request for Proposal shall not be subject to public disclosure under the Virginia Freedom of Information Act; **however, the offeror must invoke the protection of such section(s) upon submission of data or materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary (Section 2.2-4342F of the Code of Virginia).**
- B. Any proprietary or trade secret material submitted must be clearly identified by some distinct method such as highlighting/underlining or submitted in a separate and clearly labeled section. In addition, the offeror must (i) indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information and (ii) clearly state the justifiable reason why protection is necessary. Classification of an entire proposal document and/or prices (line item or totals) as proprietary or trade secret is NOT ACCEPTABLE and may result in REJECTION of the proposal.

- C. References may be made within the body of the proposal to proprietary information; however all information contained within the body of the proposal not clearly identified or contained in a separate section labeled proprietary shall be public information.
- D. The Title Sheet or Company/Executive Overview must indicate that the proposal contains proprietary or trade secret material or information and the location thereof.
- E. Once an award has been made, all proposals will be open to public inspection subject to the provisions set forth above.

## **X. PROPOSAL PREPARATION**

### **A. GENERAL**

1. Proposals must be signed by an authorized representative of the offeror. All information requested must be submitted. Proposals which are substantially incomplete or lack key information may be rejected by the City at its discretion. Each copy of the proposal should be bound in a single volume. Proposal contents shall be arranged in the same order and identified with headings as presented herein.
2. The City encourages the use of recycled products, therefore, it is urged that proposals be submitted on paper made from or with recycled content and be printed on both sides.
3. No Offeror shall initiate or otherwise have contact with any City representative or employee, other than the Purchasing Manager or Purchasing Manager's designee concerning or related to this RFP, after the date of this solicitation release and before award or cancellation of this RFP. Any contact in contradiction to this requirement is prohibited and may cause the disqualification of the Offeror from this procurement process.
4. The City will not consider information other than the materials provided in a duly submitted proposal and/or subsequent interviews for proposal evaluation purposes.
5. If an Offeror has any objections to any of the terms or conditions set forth in this RFP or any changes or additions thereto that the Offeror wants to discuss during negotiations, the Offeror should set forth such objections, changes, or additions in such Offeror's proposal submitted in response to this RFP in the "Exceptions" section of their proposal. Otherwise, submission of a proposal by an Offeror may obligate such Offeror, if it is the successful Offeror, to enter into a contract containing the same or substantially similar terms and conditions as contained herein. Other terms and conditions, if necessary, will be negotiated with the successful Offeror

### **B. SPECIFIC REQUIREMENTS**

1. The proposal should address the items included in the Scope of Services and in the Criteria for Proposal Evaluation.  
All pages of the Proposal should be printed on 8 ½" x 11" paper with type no smaller than 12 font size or equivalent.
2. Proposals should provide straightforward and concise responses to requests for information and descriptions of qualifications and capabilities.
  - a. Each copy of the proposal should be bound with all documentation in a single volume. Failure to do so may result in a lowered evaluation.
  - b. The City encourages the use of recycled products, therefore, it is urged that proposals be submitted on paper made from or with recycled content and be printed on both sides.
3. Offerors are required to submit the following as a complete proposal and should organize their proposal in the following format:

Offerors are required to submit the following as a complete proposal in the order listed:

1. **RFP Cover Page**, signed and completed as required. The Offer's signature on the RFP cover page certifies that:
  - (a) the proposal, as submitted, complies with all provisions, requirements terms and conditions and instruction as set forth in this RFP unless otherwise detailed in the "Exceptions" section of the proposal
  - (b) in the preparation and submission of this proposal, said offeror did not, either directly or indirectly, enter into any combination or arrangement with any person, firm or corporation or enter into any agreement, participate in any collusion, or otherwise take any action in the restraint of free, competitive bidding in violation of the Sherman Act (15 U.S.C. Section 1 et seq.) or Sections 59.1-9.1 through 59.1-9.17 or Sections 59.1-68.6 through 59.1-68.8 of the Code of Virginia.
  - (c) the firm submitting the proposal is registered to do business in the Commonwealth of Virginia and currently holds all required and applicable licenses and/or permits.
2. **Table of Contents** - All pages are to be numbered and indicate the offeror's name.
3. **Credentials of Firm/Overview** - Include legal name of firm submitting proposal; main office address, when and where incorporated along with name, telephone number and email address of person to contact regarding proposal questions or issues if different from that on RFP Cover page.

State the location of the office from which the work is to be performed, indicate the number of partners, managers, supervisors, seniors and other professional staff employed at that office and provide an organization chart. Identify any sub-consultants, partners, etc whose services will be material to this engagement.

Include a brief history of the firm, including number of years in business and size of firm. Identify a primary point of contact/project manager who will work with the City during the term of any contract.

Offerors shall specify in the introductory cover sheet the any section(s) containing trade secrets or proprietary information.

4. **Project Approach** - A brief written narrative statement describing the proposed project approach and methodology. The project approach narrative shall not exceed a **MAXIMUM OF FIVE (5) PAGES** and include:
  - A brief statement of the offeror's understanding of the project's Scope of Work with explanation of technical approaches and proposed methodology for executing the requirements of the technical scope. Offeror should include an awareness of difficulties of this engagement and a plan for surmounting them.
  - Information related to in-house capabilities to perform all services as outlined in this RFP as well as explanation of how specialty work will be managed through sub-consultants. Include capability of providing prompt service and support and the ability to meet scheduled deadlines.
5. **Experience and Qualifications**- Include direct experience and the number of years providing services specific to the subject matter of this RFP. Describe specific consulting engagements or other professional experience that is relevant to completing the required deliverables including:
  - a. Experience in conducting projects of the kind and size similar to that which this RFP contains including timelines or charts if applicable and available. Include experience in working with other municipal projects.



- b. Names and describe the experience and qualifications of any partners, associates or critical subcontractors to be engaged by offeror for this project. Include staff/partner/key personnel resumes along with copies of any relevant engineering licenses of company and staff. If the offeror intends to employ subcontractors, the proposal must also describe the qualifications and experience of the subcontractor's personnel to be assigned to this engagement and the responsibilities to be assigned to such personnel.
  - c. Employee turnover rate during the last five years.
  - d. Extent of the offeror's and assigned individual's experience in making presentations to elected officials and citizens.
6. **References** - Offeror must provide at least three (3) references for work similar in scope or subject matter. This shall include the name and address of the reference, the name and phone number of a person to contact, a brief description of the work that was performed and the time period of the project or contract. These references shall exclude City references.
7. **Exceptions** - The offeror shall identify (by Section Number) any specific sections or issues and elaborate on any exceptions and proposed resolution(s) to any and all technical, functional, cost, or other issues and/or terms and conditions (including Special & General Terms & Conditions) herein in a subsection labeled "Exceptions".

## **XI. PROPOSAL SUBMISSION REQUIREMENTS**

- A. In order to be considered for selection, offerors must submit a complete response to this RFP. One (1) original and three (3) copies of each proposal must be submitted to the City's Purchasing Office as detailed below. In addition, one (1) virus free soft copy (PDF format) of the proposal should be included in the package. No other distribution of proposals shall be made by the offeror.
- B. Proposals shall be placed in a sealed, opaque envelope, and clearly marked in the lower left-hand corner with the RFP number (RFP# 1219-10-GES) and RFP title (General Engineering Services), and the date/time proposals are scheduled to be received. Proposals are to be submitted by mail, courier or delivered in person **ONLY** to:  
 Attn: Purchasing Manager  
 City Of Falls Church  
 300 Park Avenue, Rm 300 E, 3<sup>rd</sup> Floor, East Wing  
 Falls Church, Virginia 22046 / phone (703) 248-5007
- C. The City Purchasing Office is open for the receipt of proposal from 8:30 AM until 4:30 PM, Monday through Friday (excluding City holidays). The City is not responsible for deliveries attempted outside of these time periods or misdirected to other offices.
- D. Any proposal received after the time and due date of proposal as noted on the cover page, whether by mail or otherwise will not be accepted or considered. The time of receipt shall be determined by the time the proposal is signed in at the Purchasing Office using the Purchasing Office Clock as the official time. Offerors are solely responsible for ensuring that their proposal is stamped by Purchasing Office personnel by the deadline indicated.
- E. If the City declares administrative or liberal leave, scheduled receipt of proposals will be extended to the next business day after which administrative or liberal leave has been canceled.
- F. Oral proposals or proposals delivered by electronic means such as facsimile and e-mail are not allowed and proposals so delivered will not be considered.
- G. No inquiries, if received by the Purchasing Manager within five (5) days of the date set for the opening of proposals, will be given any consideration. Any material interpretation of a specification, as determined by the Purchasing Manager, will be expressed in the form of an addendum which will be sent to all prospective offerors and/or posted on the City's website

([www.fallschurchva.gov](http://www.fallschurchva.gov); Purchasing & Procurement link) no later than three (3) days before the date set for receipt of proposals. Oral answers will not be authoritative.

- H. All erasures, interpolations, and other changes in the proposal shall be signed or initialed by the offeror. Carelessness in quoting business terms (i.e. prices), when such business terms are requested, or in preparation of the proposal will not relieve the offeror. When an error is made in extending total prices, the unit price will govern. Offerors are cautioned to recheck their proposals for possible error. Errors discovered after negotiation cannot be corrected, and the offeror will be required to perform if its proposal is accepted.
- I. By submitting a proposal in response to this Request for Proposal, the offeror represents it has read and understands the Scope of Work, Standard Provisions, General Terms and Conditions any other attachments hereto and has familiarized itself with all federal, state, and local laws, ordinances, and rules and regulations that in any manner may affect the cost, progress, or performance of the contract work.
- J. The failure or omission of any offeror to receive or examine any form, instrument, addendum, or other documents or to acquaint itself with conditions existing at the site, if applicable, shall in no way relieve any offeror from any obligations with respect to its proposal or to the contract.
- K. The offeror agrees that proposals will remain firm for a minimum period of one hundred and twenty (120) calendar days after the date specified for receipt of the RFP.
- L. Under no circumstances shall an offeror, whose proposal has not been awarded, be entitled to any claim for compensation under this solicitation.

## XII. PROPOSAL EVALUATION

- A. Proposals shall be evaluated by the City's Selection & Evaluation Committee ("Committee"). Proposals determined not to meet one or more RFP requirements may be excluded from further consideration.
- B. The following factors will be considered by the Committee in the award of a contract:
  - 1. **Credentials of Firm/Project Team** - Qualifications of the firm with appropriately qualified, licensed and experienced personnel necessary to perform the work. Proposed project resources. Strength of the resumes of the project manager/point of contact and other staff, partners, subcontractors proposed to do the work. Engineering license issued by the State of Virginia. Copy of License should be provided with the proposal.
  - 2. **Experience**- Documented experience of firm and staff in performing similar professional services. Favorable references from other commercial and/or government entities.
  - 3. **Project Approach/Methodology** - Depth of response and a clearly demonstrated understanding of the services to be provided and work to be performed including but not limited to completeness and reasonableness of the offeror's plan for accomplishing the Scope of Services. Approach, completeness and reasonableness of the offeror's plan, timeline, and milestones for accomplishing the tasks. In house capabilities to provide all services and the ability to complete projects as may be requested by the City. Ability to meet proposed target/schedules.
  - 4. **Proposal Compliance** - The extent to which the proposal meets the requirements of the RFP and the extent to which the offeror is likely to be able to achieve the desired results. Proposed exceptions to contract language, Conditions and Instructions to Offerors, and scope of work requirements and other sections of the RFP will also be considered.
  - 5. **Reasonableness Of Non-Binding Costs** – Although Consulting fees **ARE NOT** to be submitted with the initial proposal response, such proposed non-binding fees may be considered for those short listed firms involved in the discussion phase of the selection process.

- C. The Committee will evaluate the responses of all offerors to create a short list of those deemed responsible and most qualified to perform the work.
1. The following criteria, all of relatively equivalent importance, will be used in addition to the review of professional competence of each offeror for evaluation of the offerors for the short list:
    - Credentials of Firm/Project team
    - Experience
    - Project Methodology/Approach
    - Proposal Compliance

### **XIII. BASIS OF AWARD**

- A. The offerors selected by the Committee for the short list may be required to give an oral presentation of their proposal to the City. At this opportunity, such Offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed projects as well as alternative concepts.
- a. **Consulting fees ARE NOT** to be submitted with the proposal response however, short listed offerors may be requested to include non-binding estimates of total project costs including, where appropriate, design, construction, life cycle cost, nonbinding estimates of price for consulting fees, hourly rates, services, and other matters. Methods to be utilized in arriving at a price for services may also be discussed. The City may use such estimates in ranking firms.
  - b. Offerors should note that when identifying estimated, non-binding contract fees and /or hourly rates, the City expects the following will apply and be included in any resultant contract:
    - The City does not accept mark-ups on reimbursable expenses, including fees charged by sub-consultant(s).
    - Job classifications and fixed hourly rates are to be those of based on the contract fees and hourly rates
    - Known sub-consultant's fees and hourly rates are to be included.
    - Future fees and rates for as ordered projects will be subject to a reasonable and mutually agreeable annual price escalation cap based on a standard such as an applicable index from the U.S. Department of Labor's Bureau of Labor Statistics or some other applicable metric.
  - c. Oral presentations are fact finding and explanation sessions only and do not include negotiation.
  - d. Repetitive informal interviews shall be permissible.
  - e. Oral presentations are an option and may not be conducted. Therefore, proposals should be comprehensive and complete.
  - f. Properly designated proprietary information from competing Offerors shall not be disclosed to the public or competitors, except as may be required by law
- B. At the conclusion of the informal interviews, on the basis of evaluation factors outlined in this Request for Proposals and all information developed in the selection process to this point, the Evaluation Committee, shall select, in the order of preference, two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the City can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Alternately, the City may elect to cancel this solicitation and make no award.

- C. During the negotiations, the offeror shall propose fixed unit prices for various services to be provided under the agreement. Firm fixed fees will be negotiated for the first twelve months of the contract term. If a need arises for services not covered as part of the original agreement, separate fees will be agreed upon by the Parties, in writing, prior to commencement of such services subject to a reasonable and mutually agreeable annual price escalation cap based on a standard such as an applicable index from the U.S. Department of Labor's Bureau of Labor Statistics or some other applicable metric..
- D. Should the Committee determine in writing that only one (1) offeror is fully qualified, or that one (1) offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.
- E. The City is not required to furnish a statement of the reasons why a particular proposal was not deemed the most advantageous.
- F. Offerors are advised that, in the event of receipt of an adequate number of proposals, which, in the opinion of the City, require no clarifications and/or supplementary information, such proposals may be evaluated without further discussion. Hence, proposals should be initially submitted with the most complete and favorable terms from a technical standpoint which offerors are capable of submitting to the City. Should proposals require additional clarification and/or supplementary information, offerors should be prepared to submit such additional clarification and/or supplementary information, in a timely manner, when so requested.
- G. All awards for professional services over \$60,000 are contingent upon City Council approval.
- H. A written award notice (or Acceptance Agreement, Contract, or Purchase Order) mailed (or otherwise furnished) to the successful offeror within the time for acceptance specified in the solicitation or otherwise mutually agreed upon shall be deemed to result in a binding contract. The award document will be a contract incorporating by reference all the requirements, terms, and conditions of the solicitation and the offeror's proposal as negotiated.
- I. Public announcement of an award or intent to award will be posted on the City's Purchasing and Procurement Web Page ([www.fallschurchva.gov](http://www.fallschurchva.gov); "Purchasing and Procurement" link).

#### **XIV. STANDARD PROVISIONS**

- A. Precedence of Terms: In the event that there is a conflict between any specific terms and conditions in this section, and terms of the General Conditions and Instructions to Offers, the Standard Provisions shall take precedence.
- B. Section Headings: The headings of the sections in the "Standard Provisions" and/or "General Conditions and Instructions to Offers" are inserted for convenience only and are not intended to affect the meaning or interpretation of this solicitation or any resultant contract.

##### **1. Debarment /Excluded Status**

By submitting a proposal, the offeror(s) (including any partner, associate, or subcontractor associated with the provision of services under this solicitation) certify that they are not (1) currently debarred from conducting business or submitting proposals on contracts by any local government or agency of the Commonwealth of Virginia, or the Federal Government; (2) an agent of any person or entity that is currently debarred from conducting business or submitting proposals on contracts by any local government or agency of the Commonwealth of Virginia, or the Federal Government; or (3) suspended, proposed for debarment, excluded or disqualified under the nonprocurement common rule, or otherwise declared ineligible from receiving Federal contracts, certain subcontracts, and certain Federal assistance and benefits. For procurements that are to be funded by Federal monies, the City will confirm a vendor's status via the Excluded Parties List of the Federal Government

##### **2. Key Personnel**

Any personnel named in the proposal details will remain responsible for performance of the described task(s) throughout the period of any contract resulting from the solicitation. No

diversion or replacement may be made without advance written notice to the Project or Purchasing Manager and submission of a resume of the proposed replacement for review and approval by the City.

### **3. Choice Of Law and Courts**

Any contract resulting from this solicitation is made, entered into, and shall be performed in the City of Falls Church, Virginia, unless otherwise specified, and shall be governed by the applicable laws of the Commonwealth of Virginia. Any dispute arising out of the contract, its interpretations, or its performance shall be litigated only in either the General District Court or in the Circuit Court of the County of Arlington, Virginia.

### **4. Compliance With Laws**

The Contractor shall comply at its own expense with all federal, state, and local laws, rules, regulations, and orders that are directly or indirectly related to the Contractor's performance under the contract, including procurement of required permits, certificates, licenses, insurance, approvals, and inspections. The Contractor shall comply with the Code of Virginia and Section 2.2-4300, the Virginia Procurement Act. The Code of Virginia and the Virginia Public Procurement Act are incorporated herein by reference.

### **5. BPOL License Requirement**

All firms doing business in the City of Falls Church must be licensed in accordance with the City's Business, Professional and Occupational Licensing (BPOL) Tax Ordinance, if applicable, prior to performance under the contract. Wholesale and retail merchants without a business location in the City are exempt from this requirement. Questions regarding the BPOL license and tax should be referred to the Office of the Commissioner of the Revenue, 300 Park Avenue, Suite #104E, Falls Church, Virginia 22046-3301. Phone: (703) 248-5019; Fax: (703) 248-5212.

### **6. Insurance**

- a. The Contractor is responsible for its work and for all materials, tools equipment, appliances, and property of any and all description used in connection therewith. The Contractor assumes all risk of direct and indirect damage of or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the contract, or in any way whatsoever with the contracted work.
- b. The Contractor shall, during the continuance of all work under the contract provide the insurance as detailed below:
  - 1) Maintain statutory Workers' Compensation and Employer's Liability insurance in limits of not less than \$100,000 to protect the contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, volunteers, or subcontractors including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia, or which may be hereinafter enacted.
  - 2) Maintain Commercial General Liability insurance in the amount of \$1,000,000 per occurrence/aggregate, to protect the Contractor, its subcontractors, and the interest of the City, its officers and employees against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Contract or in connection with the contracted work. The General Liability insurance shall also include the Broad Form Property Damage endorsement, in addition to coverages for explosion, collapse and underground hazards, where required. Completed operations liability endorsement shall continue in force for three years following completion of the contract.
  - 3) Maintain owned, non-owned, and hired Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, including property damage,

covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the contractor. In addition, all mobile equipment used by the contractor in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy. The Garage Keeper's Liability coverage shall also be maintained where appropriate.

- 4) Maintain Environmental Impairment Liability Insurance including sudden and accidental pollution and in transit coverage as well as coverage for storage at site in the limits of \$2,000,000 per occurrence/aggregate where appropriate.
  - 5) Maintain Professional Liability Insurance in the amount of \$1,000,000 per occurrence/aggregate to cover each individual professional staff where appropriate.
  - 6) Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy
- c. The coverage shall be provided by a carrier(s) companies admitted within the Commonwealth of Virginia, with the A.M. Best's Key Rating of at least A:VI.
  - d. No change, cancellation, or non-renewal shall be made in any insurance coverage without a forty five (45) day advance written notice to the City. The Contractor shall furnish a new certificate prior to any change or cancellation dated. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
  - e. During the period of the contract, the City reserves the right to require the contractor to furnish certificates of insurance for the coverage required.
  - f. The Contractor will provide an original, signed Certificate of Insurance citing the contract number and such endorsements as prescribed herein before any work is started.
  - g. Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all subcontractors of their liabilities provisions of the contract.
  - h. The City, its officers and employees shall be named as an "additional insured" in the Automobile and General Liability policies and it shall be stated on the Insurance Certificate that his coverage "is primary to all other coverage the City may possess."
  - i. If an "ACCORD" Insurance Certificate form is used by the Contractor's insurance agent, the words, "endeavor to" and "..... but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "Cancellation" paragraph of the form shall be deleted or crossed out.

## **7. Invoicing And Payment**

Billings to the City shall be presented monthly on invoice forms and must reference the applicable Purchase Order Number and Contract Number. Invoices should be addressed to as indicated on the Purchase Order.

All such invoices will be paid net thirty (30) days after receipt of an undisputed invoice unless (i) more favorable terms are stated on Contractor's invoice and the City elects to pay on such terms, or (ii) any items thereon are questioned, in which event payment will be withheld pending verification of the amount claimed and the validity of the claim. The Contractor shall provide complete cooperation during any such investigation.

The prices and payments shall be full compensation for the services, labor, work and all other incidentals authorized and necessary to deliver the services ordered.

Payment terms shall appear on vendor's invoice. Any discount period shall be computed from the date of proper receipt of the Contractor's correct invoice. Late payment charges

shall not exceed the allowable rate specified by the Commonwealth of Virginia Prompt Payment Act (1%per month)

Payment by the City of such invoices does not mean or imply that the goods or services have been accepted and does not impair or limit in any way the City's full rights and remedies which shall be and remain as set forth hereof.

The City reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provision of the contract or any modifications thereto.

Conflicting pre-printed provisions on the reverse or front of the Contractor's form(s) shall be deemed deleted.

## **8. Safety**

All Contractors and subcontractors performing services for the City are required to comply with OSHA standards, all other Federal and State guidelines, and other industry accepted safety rules and regulations.

## **9. Warranties**

Contractor warrants to the City that services provided hereunder shall be diligently, efficiently and skillfully performed in a manner which meets or exceeds the highest prevailing standards in the industry, and in accordance with applicable specifications.

All warranties shall survive inspection, acceptance and payment. Unless otherwise stated, manufacturer's standard warranty applies

## **10. Default**

In case of failure to deliver products or services within the time specified and/or meet specifications, in accordance with the contract terms and conditions, the City, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the City may have. Should public necessity demand it, the City reserves the right to use services performed which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Manager.

## **11. Termination**

Subject to the provisions below, the contract may be terminated by the City upon thirty days (30) written notice; but if any work or service hereunder is in progress, but not completed as of the date of termination, then the contract may be extended upon written approval of the City until said work or services are completed and accepted.

### **a. Termination for Convenience**

In the event that the contract is terminated or cancelled upon request and for the convenience of the City, without the required thirty (30) days advance written notice, then the City shall pay the Contractor a reasonable, equitable adjustment in the contract price for completed performance, but no amount shall be allowed for anticipated profit on unperformed services.

### **b. Termination for Cause**

The City may terminate the contract for cause, default, or negligence on the part of the Contractor at any time. Termination by the City for cause, default or negligence on the part of the Contractor shall be excluded from the foregoing provision (a) hereinabove; termination cost, if any, shall not apply. The thirty (30) days advance notice requirement is waived in the event of Termination for Cause. In the event any Termination for Cause is found to be improper or invalid by any court of competent jurisdiction, then such termination shall be deemed to have been a Termination for Convenience.

c. **Termination Due to Unavailability of Funds in Succeeding Fiscal Years**

All funds for payments by the City for goods/services under contract are subject to the availability of general or specific annual appropriation for this purpose. In the event of non-appropriation of funds for the goods or services provided under contract or substitutes for such goods or services which are as advanced or more advanced in their technology, the City will terminate the contract, without termination charge or other liability to the City, on June 30th of the then current fiscal year or when the appropriation made for the then current year for the services covered by the contract is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Contract, cancellation will be accepted by the Contractor on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and the City shall not be obligated under the contract beyond the date of termination. Contractor will be reimbursed for the reasonable value of any actual, documented, nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract prior to the date of termination. No amount shall be allowed for anticipated profit on unperformed services.

**12. Access**

The City will, at all times, have access to the work being performed under contract wherever it may be in progress or preparation.

**13. Delays**

If delay is foreseen, Contractor shall give thirty (30) days prior written notice to the designate City Project Manager. The City has the right to extend delivery date if reasons appear, in the sole discretion of the City, to be valid. Contractor must keep the City advised at all times of status of order. Except as otherwise provided in the contract, default in promised delivery or failure to meet specifications, authorizes the City to purchase services elsewhere and charge full increase in cost and handling to defaulting Contractor.

**14. Correspondence**

All communications between the parties relating to material contractual issues shall be through the Purchasing Manager and must be in writing to be deemed binding.

**15. Work Site/Property Damages**

Any damage to property, whether owned by the City or others, resulting from work performed under this contract, shall be repaired or replaced to the City's satisfaction at the Contractor's expense. Contractor shall immediately notify City of any such damages.

**16. Purchase Orders**

Contractor shall not start work prior to the receipt of a purchase order. A purchase order may be enclosed with the resulting contract or may be issued shortly thereafter, and will become an integral part of the resulting contract. The purchase order indicates that sufficient funds have been obligated as required by Title 15 or the Code of the Commonwealth of Virginia and assures distribution of the necessary receiving reports.

Any purchase order issued by the City which references this solicitation or resultant contract, shall be deemed to be placed under and incorporate the terms and conditions of this solicitation or resultant contract as well as any supplemental terms and conditions agreed to by the parties in writing. However, the City's failure to specifically incorporate, identify, or reference the contract on any purchase order shall in no manner affect the applicability of these terms and conditions.

**17. Use and Ownership of Information**

Any specifications, drawings, sketches, models, samples, tools, computer or other apparatus programs, technical or business information or data, written, oral, or otherwise (all hereinafter designated "Information") which the City furnished, or shall furnish, to the Contractor under



the contract or in contemplation of a contract, or that Contractor comes in contact with on City premises or under City control shall remain City property. All copies of such information in written, graphic or other tangible form, and all information, ideas, discoveries, improvements, derived from or reflecting such information, shall be returned to City at its request, and in any event within thirty (30) days after the expiration or termination of the contract. Unless such information was previously known to Contractor free of any obligation to keep it confidential, or has been or is subsequently made public by City or a third party without breach of any agreement, it shall be kept strictly confidential and shall be used only in performing services under this Agreement, and may not be used for other purposes except upon such terms as may be agreed upon between Contractor and City in writing. Unless approved in writing by the Purchasing Manager, the Contractor may not sell or give to any individual or organization any information, reports, or other materials given to, prepared, or assembled by the Contractor under the contract.

Ownership of all data, materials and documentation originated and prepared for the City pursuant to the solicitation and/or resultant contract shall belong exclusively to the City and be subject to public inspection in accordance with the Virginia Freedom of Information Act.

#### **18. Data Sources**

The City will provide the Contractor with all necessary and available data possessed by the City that relates to the contract. However, the Contractor is responsible for all costs for acquiring other data or processing, analyzing, or evaluating City data.

#### **19. Additions/Deletions:**

The City reserves the right to add similar items/services or delete items/services specified in the resultant contract as requirements change during the period of the contract. The City and the Contractor will mutually agree to prices for items/services to be added to the contract and/or reduction in overall costs for items/services deleted. Contract amendments will be issued for all additions or deletions.

#### **20. Changes**

The City may, at any time, by written order, require changes in the products to be provided or services to be performed by the Contractor. If such changes cause an increase or decrease in the Contractor's cost of, or time required for performance of any services or provision of products under the contract, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. The City must approve all work that is beyond the scope of this solicitation. Actual projects/tasks will be ordered in writing by the City, unless for an emergency situation, the Contractor may not begin work on projects until such time as a written authorization and approval of the funding for the project is made.

No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the City.

#### **21. Dispute Resolution**

Arbitration shall not be applicable but the parties shall negotiate in good faith to resolve any dispute arising under this Agreement. Disputes by Contractor with respect to the contract which are not otherwise disposed of by mutual agreement shall be submitted in writing and forwarded to the City Purchasing Manager. The Contractor's dispute shall detail all pertinent facts of the dispute and the desired outcome.

Such dispute shall be considered and decided in the first instance by the City's Purchasing Manager, whose decision shall be reduced to writing and forwarded to the Contractor within twenty (20) days of receipt of such written dispute. The decision of the Purchasing Manager shall be final and binding unless within twenty (20) days from the date of such decision, the Contractor forwards a written appeal addressed to the City Manager with copy to the Purchasing Manager. Within twenty (20) days of receipt of such written appeal, the City Manager shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Contractor.

The decision of the City Manager shall be final and binding unless the Contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. Pending a final determination of a properly appealed decision of the Purchasing Manager, the Contractor shall proceed diligently with the performance of the Contract in accordance with that decision.

In accordance with §2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment. However, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

## **22. Non-Waiver**

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the contract, shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

The City's failure at any time to enforce any of the provisions of the contract or any right or remedy available hereunder or at law or equity, or to exercise any option herein provided will in no way be construed to be a waiver of such provisions, rights, remedies or options or in any way to affect the validity of this agreement. The exercise by the City of any rights, remedies or options provided hereunder or at law or equity shall not preclude or prejudice the exercising thereafter of the same or any other rights, remedies, or options.

## **23. Indemnification**

The Contractor agrees to indemnify, defend and hold harmless the City of Falls Church, Virginia, its officers, agents, and employees from any claim, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor or any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using department or to failure of the using department to use the materials, goods or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered. The Contractor agrees to protect the City from claims involving infringement of patent or copyrights.

Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and hold harmless and defend the City as herein provided.

## **24. Emergency Purchases**

If the Contractor is unable to provide the required services for any period of time, except as provided in the Section "General Terms and Conditions & Instructions to Offerors", paragraph entitled "FORCE MAJEURE", the Contractor is responsible for providing a backup service, satisfactory to the City, at no additional cost to the City. The City reserves the right to make arrangements for service, under emergency conditions from other sources, should the Contractor be unable to provide the required service within the required time frame. If this occurs, the City further reserves the right to recover all costs from the Contractor

## **25. News Release/Publicity By Contractors**

As a matter of policy, the City does not endorse the products or services of a Contractor. News releases or other publicity concerning any resultant contract from this solicitation will not be made by a Contractor without the prior written approval of the City. All proposed news releases will be routed to the Purchasing Manager for review and consideration of approval.

**26. Relationship Of Parties**

In providing any goods or services under any resulting contract, the Contractor is acting solely as an independent contractor and not as an agent of any other party. Persons furnished by the respective parties shall not be considered employees of the other party for any purpose. Nothing contained in the solicitation or any resultant contract is intended to give rise to a partnership or joint venture between the parties.

**27. Provisions Required By Law Deemed Inserted**

Each and every provision of laws and clauses required by law to be inserted in a contract resulting from this solicitation shall be deemed to be inserted and incorporated by reference. The contract shall be read and enforced as though the required provisions are included and if through mistake or otherwise, any such provision is not inserted or not correctly inserted, then upon the application of either party, the contract may be amended to make such Insertion.

**XV. GENERAL CONDITIONS AND INSTRUCTIONS TO OFFERORS**

- A. The general rules and conditions which follow apply to all purchases and become a definite part of each formal solicitation and resulting contract award issued by the City of Falls Church, VA ("City"), unless otherwise specified.
  - B. Subject to all state and local laws and all rules, regulations and limitations imposed by legislation of the federal government, proposals on all solicitations issued by the City will bind offerors to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.
1. **DEFINITIONS:** The terms defined in this section shall have the meanings set forth below whenever they appear regardless of case (capitalized or not), unless the context in which they are used clearly requires a different meaning or a different definition is described for a particular Section or provision:
    - a. **OFFEROR:** Any individual, company, firm, corporation, partnership or other organization providing a proposal in response to a solicitation issued by the Purchasing Manager and offering to enter into contract with the City.
    - b. **CONTRACTOR/CONSULTANT:** Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the City.
    - c. **DAY:** Unless otherwise specified "day" or "days" shall mean calendar days
    - d. **GOODS:** All material, equipment, supplies, printing, and automated data processing/information technology hardware and software.
    - e. **INFORMALITY:** A minor defect or variation of a proposal from the exact requirements of the Request for Proposal which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.
    - f. **PROFESSIONAL SERVICES:** Any type of professional service performed by an independent contractor within the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering.
    - g. **PROPOSAL:** The offer of a supplier to provide goods and/or services in accordance with general specifications or requirements in a Request for Proposal solicitation (RFP). A Proposal is subject to scope and price negotiation.
    - h. **PURCHASING MANAGER:** The Purchasing Manager employed by the City of Falls Church, Virginia.
    - i. **REQUEST FOR PROPOSAL (RFP):** A request which is made to prospective suppliers (Offeror) for a Proposal. The RFP will specify the evaluation factors to be used and will contain or incorporate by reference other contractual terms and conditions applicable to the procurement.

- j. **RESPONSIBLE OFFEROR:** An individual, company, firm, corporation, partnership or other organization having the capability in all respects to perform fully the contract requirements, and also having the moral and business integrity and reliability which will assure good faith performance, and having been prequalified, if required.
- k. **SERVICES:** Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.
- l. **SOLICITATION:** Depending upon the context – an RFP or the process of notifying prospective offerors that the City wishes to receive proposal on a set of requirements to provide goods or services.
- m. **STATE:** Commonwealth of Virginia.

#### **CONDITIONS OF SOLICITATION RESPONSE**

- 2. **ACCEPTANCE OF PROPOSALS - BINDING 90 DAYS -** Unless otherwise specified, all proposals submitted shall be binding for a ninety (90) calendar days following solicitation opening date, unless extended by mutual consent of all parties.
- 3. **TAX EXEMPTION:** The City is exempt from the payment of federal excise taxes and the payment of State Sales and Use Tax on all tangible, personal property for its use or consumption. Tax exemption registration number 54-6001271 applies. Certificated furnished upon request. The price proposed must be net, exclusive of taxes.
- 4. **PROHIBITION AGAINST UNIFORM PRICING -** In submitting a solicitation response each offeror shall, by virtue of submitting a proposal, guarantee that he or she has not been a party with other offerors to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the proposals of participating offerors. .
- 5. **PROMPT PAYMENT DISCOUNT -** In connection with any discount offered, time will be computed from the date of delivery of the services or supplies to the carrier when delivery, inspection and acceptance are at the point of origin; or, from date of delivery, inspection and acceptance at destination; or, from date correct invoice or voucher is received in the office specified by the City, if the latter is later than the date of acceptance. In the event the offeror does not indicate a prompt payment discount, it shall be construed to mean NET 30 days.
- 6. **FUNDING-A** contract shall be deemed binding only to the extent of appropriations available for the purchase of goods and services.

#### **OFFEROR REMEDIES**

- 7. **PROTEST OF AWARD OR DECISION TO AWARD:**  
Any offeror may protest the award or decision to award a contract by submitting a protest in writing to the Purchasing Manager, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first in pursuant to this RFP only in accordance with the provisions of Sections 2.2-4357, 4358, 4359, 4360, 4363, and 4364 of the Code of Virginia, and only if such is provided for in such Code section.

#### **GENERAL CONTRACT PROVISIONS**

- 8. **CONTRACT ALTERATIONS -** No alterations in the terms of a contract shall be valid or binding upon the City unless made in writing and signed by the City's authorized representative.
- 9. **ASSIGNMENT OF CONTRACT -** Contractor shall not assign, transfer, convey, sublet or otherwise dispose of his or her contractual duties (in whole or in part) to any other person, firm or corporation, without the previous written consent of the City. If the Contractor desires to assign their right to payment of the contract, Contractor shall notify the Purchasing Manager immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from his or her obligations or change the terms of the contract.
- 10. **ANTI-TRUST:** By entering into a contract, the offeror conveys, sells, assigns, and transfers to the City all rights, title and interest in and to all causes of the action it may now have or hereafter

acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the City under said contract.

11. **ANTI-DISCRIMINATION:** By submitting their proposals all offerors certify to the City that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, where applicable, and Section 2.2-4311 of the Virginia Public Procurement Act which provides:

In every contract over \$10,000.00 the provisions in "a" and "b" below apply:

- a. During the performance of this contract, the contractor agrees as follows:
  - 1) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
  - 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- b. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

12. **ETHICS IN PUBLIC CONTRACTING:** The provisions contained in Sections 2.2-4367 through 2.2-4377 of the Virginia Public Procurement Act as set forth in the Code of Virginia (1950), as amended, shall be applicable to all contracts solicited or entered into by the City.

By submitting their proposals, all offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

13. **CRIMINAL SANCTIONS:** The provisions referenced in Item 19 supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§§ 18.2-498.1 et seq.), and Articles 2 (§§ 18.2-438 et seq.) and 3 (§§ 18.2-446 et seq.) of Chapter 10 of Title 18.2. The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.
14. **FORCE MAJEURE:** Neither party shall be liable for any delay or failure to perform its obligations in connection with any action described in this Agreement, if such failure results from any act of God, riot, war, civil unrest, flood, earthquake, acts by the public enemy, or other cause beyond such party's reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).
15. **RECORD RETENTION/AUDITS:** The Contractor shall maintain accurate records of all invoices, amounts billable to and payments made by the City, during the performance of the contract and for a period of three (3) years from the completion of this agreement. Such records shall include, but not be limited to: all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices, including the Contractor's copies of periodic estimates for partial payment; ledgers, cancelled checks; deposit slips; bank statements; journals; contract amendments, and change orders; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Such records shall be available to the City on demand and without advance notice during the Contractor's normal working hours. City personnel or designee may perform in-progress and post-audits of the Contractor's records.
16. **SUBCONTRACTING:** If one or more subcontractors are required, the contractor is encouraged to utilize small, minority-owned and women-owned business enterprises. For assistance in

finding subcontractors, contact the Virginia Department of Business Assistance <http://www.dba.state.va.us/>; the Virginia Department of Minority Business Enterprise <http://www.dmbes.state.va.us/>; local chambers of commerce and other business organizations. As part of the contract award, if requested by the City, the prime contractor agrees to provide the names and addresses of each subcontractor that subcontractor's status as defined by the Commonwealth of Virginia as small, minority-owned and/or woman-owned business and the type and dollar value of the subcontracted goods/services provided.

The Contractor may subcontract third party issues performed under the contract, but must submit a written list of those subcontractors, their addresses, personnel who will be performing the work, and a description of the work to be performed to the City prior to the work actually being done. The City must agree to the third party's work and reserves the right to deny the third party access if necessary.

17. **PAYMENTS TO SUBCONTRACTORS:** Within seven (7) days after receipt of amounts paid by the City for work performed by a subcontractor under this Agreement, the Contractor shall either:
  - a. Pay the subcontractor for the proportionate share of the total payment received from the City attributable to the work performed by the subcontractor under this agreement; or,
  - b. Notify the City and subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment and the reason for non-payment.

The Contractor shall pay interest to the subcontractor on all amounts owed that remain unpaid beyond the seven-day period except for amounts withheld as allowed in item b. above.

Unless otherwise provided under the terms of this agreement, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include this provision in each of its subcontracts requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor. The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this provision may not be construed to be an obligation of the City.

18. **TIME OF THE ESSENCE:** - Time is of the essence in respect to all provisions of the contract that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this agreement.
19. **REPORTS** - The Contractor must submit status reports as requested appropriate to the tasks and projects that are developed under contract in a form, format and frequency satisfactory to the City.
20. **QUALITY:** - All services shall be performed in a first class workmanlike manner in accordance with current industry standards. All products and services shall meet the current applicable state and federal rules and guidelines.
21. **LEGAL ACTION:** No offeror, potential offeror, or subcontractor shall institute any legal action until all statutory requirements have been met.
22. **QUALIFICATIONS OF OFFERORS:** The City may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods, and the offeror shall furnish to the City all such information and data for this purpose as may be requested. The City reserves the right to inspect the offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The City further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the City that such offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
23. **SERVICE CONTRACT GUARANTY:** The Contractor agrees to:
  - a. Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions therein set forth provided that the City may reduce the said services at any time.

- b. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
- c. Render all work and services in strict conformance to all laws, statutes, and ordinances and the applicable rules, regulations, methods, and procedures of all government boards, bureaus, offices, and other agents.
- d. Allow services to be inspected or reviewed by an employee of the City at any reasonable time and place selected by the City. The City shall be under no obligation to compensate the offeror for any services not rendered in strict conformity with the contract.

The presence of a City representative during the performance of work shall not lessen the obligation of the offeror for performance in accordance with the contract requirements, or be deemed a defense on the part of the offeror for infraction thereof.

**24. OFFICIALS NOT TO BENEFIT**

- a. Each offeror shall certify, upon signing a proposal, that to the best of his or her knowledge no City of Falls Church official or employee having official responsibility for the procurement transaction, or member of his or her immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.
- b. Whenever there is reason to believe that a financial benefit of the sort described in paragraph "a" has been or will be received in connection with a proposal or contract, and that the contractor has failed to disclose such benefit or has inadequately disclosed it, the City Manager, as a prerequisite to payment pursuant to the contract, or at any other time, may require the Contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.
- c. In the event the offeror has knowledge of benefits as outlined above, this information should be submitted with the proposal. If the above does not apply at time of award of contract and becomes known after inception of a contract, the offeror shall address the disclosure of such facts to the City of Falls Church, 300 Park Avenue, Falls Church, VA 22046. Relevant Invitation/Request for Proposal Number should be referenced in the disclosure.

**25. REGISTERING OF CORPORATIONS-**Any foreign corporation transacting business in Virginia shall secure a certificate of authority as required by Section 13.1-757 of the Code of Virginia, from the State Corporation Commission, Post Office Box 1197, Richmond, Virginia 23209. The Commission may be reached at (804) 371-9733. The consequences of failing to secure a certificate of authority are set forth in Virginia Code Section 13.1-758.

**26. VIRGINIA FREEDOM OF INFORMATION ACT:** All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act except as provided below:

- a. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
- b. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award except in the event that the City decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to the public inspection only after award of the contract except as provided in paragraph "c" below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
- c. Trade secrets or proprietary information submitted by a offeror or Contractor in connection with a procurement transaction or prequalification application submitted

pursuant to the prequalification process identified in the Special Provisions, shall not be subject to the Virginia Freedom of Information Act; however, the offeror or subcontractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

Nothing contained in this section shall be construed to require the City, when procuring by "competitive negotiation" (Request for Proposal), to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to the City.

27. SMALL, WOMAN AND MINORITY-OWNED BUSINESS (SWaM):

- a. The City encourages Small, Woman and Minority-owned business to participate in business opportunities with the City. Contact the Virginia Department of Minority Business Enterprise for information regarding certification and certified businesses: <http://www.dmbv.virginia.gov/>
- b. Where Federal grants or monies are involved it is the policy of City, through its agents and employees, to comply with the requirements set forth in the U.S. Office of Management and Budget Circular No. A-102, uniform administrative requirements for Grants and Cooperative Agreements with State and Local Governments, as they pertain to small and minority business utilization.

28. DRUG FREE WORKPLACE-During the performance of a contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a contractor in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

29. AMERICANS WITH DISABILITY ACT - The City is fully committed to letter and spirit of the Americans with Disabilities Act (ADA) which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all City programs, activities and services. The City's government contractors, subcontractors, offerors, and/or suppliers are subject to this ADA policy. All individuals having any City contractual agreement must make the same commitment. The Contractor's acceptance of any contract with the City acknowledges your commitment and compliance with ADA.

30. IMMIGRATION REFORM AND CONTROL ACT OF 1986: By entering into a written contract with the City, the Contractor certifies that the Contractor does not, and shall not, during the performance of the Contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986..